IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 242 of 2003(F)

OPMV.611/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYANAD, KALPETTA

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APPELLANT: PETITIONER IN O.P (M.V) 611/95:

KADEEJA A.P., AGED 55,
W/O. E.P. EMBICHI HAJI, EDAKKANDI HOUSE,
NENMENI P.O., MADAKKARA, NENMENI AMSOM,
SULTHAN BATHERI TALUK.

BY ADV. SRI.T.KURIAKOSE PETER
SRI.ABRAHAM P.GEORGE

RESPONDENTS: RESPONDENTS IN O.P.(M.V) 611/95:
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1. K.C.JOSEPH, AGED 59 YEARS,
S/O. CHACKO, ANANTHASSERIYIL HOUSE,
PULLORAPPARA, THIRUVAMBADI P.O., KOZHIKODU.

2. THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.J.MATHEW FOR R1
SRI.THOMAS JOHN AMBOOKEN
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. NO. 242 OF 2003

Dated this the 11th day of October, 2007

J U D G M E N T

Petitioner in O.P.(MV) 611/95 on the file of the Motor Accidents Claims Tribunal, Waynad, is the appellant. The appeal is filed against an award passed by the Tribunal dismissing the original petition filed by the petitioner claiming compensation for the injuries sustained by her in a motor vehicle accident. The appellant filed the original petition claiming compensation against the respondents alleging that on 28.11.94 she sustained injuries in a motor vehicle accident. It was averred that the appellant was traveling in a stage carriage bus bearing registration No.KL-14/1174 owned by the 2nd respondent KSRTC. It was averred that the bus was driven by the 1st respondent driver in a rash or negligent manner. She claimed a compensation of Rs.90,000/-. The 1st respondent filed a written statement contending that the appellant did not sustain any injuries in a motor vehicle accident. It was averred that if at all she sustained any injuries it was due to some other reasons. The 2nd respondent also filed a written statement denying the accident and also the negligence alleged against the 1st respondent. The quantum of compensation claimed was also disputed. The Tribunal dismissed the original petition. Challenging that award, this appeal is filed.

2. Learned counsel appearing for the appellant has argued that the finding of the Tribunal that the petitioner did not adduce any evidence is not correct. It is argued that the appellant produced documentary evidence in support of her case. It is also argued that the police has registered crime No.282/94 of Kalpetta Police Station, against the 1st respondent. It is argued that those documents were produced. But the Tribunal did not mark those documents. After considering all aspects of the issue, I am of the view that it is only just and proper that the appellant be given one more opportunity to adduce evidence. For that purpose the case has to go back.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing O.P. 611/95 is hereby set aside. The case is remitted back to the Tribunal. Tribunal is directed to take O.P.(MV) 611/1995 back to file and dispose of the same afresh in accordance with law after giving both sides opportunity to adduce evidence. It is made clear that both sides can adduce oral as well as documentary evidence. The parties shall appear before the Tribunal on 12.11.2007.

K.PADMANABHAN NAIR, JUDGE

vps